



# MUCKLESHOOT TRIBAL COUNCIL

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March 14, 2018

Secretary Marlene Dortch  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: The Muckleshoot Tribe's Opposition to draft Report and Order (WT 17-79)

Dear Chairman Pai and Members of the Commission:

The Muckleshoot Tribe opposes the draft Report and Order released on March 1, 2018 that purports to narrow the obligations of the Federal Communications Commission ("FCC") under the National Historic Preservation Act ("NHPA") and National Environmental Policy Act ("NEPA") and restricts tribal participatory rights protected by those laws. The draft order's approach will be detrimental to tribal governments, tribal cultural and historic resources, and does very little to encourage deployment of wireless service to areas like many reservation lands, that need it most.

Fifteen years ago, the FCC stated that it was impractical for it to consult on thousands of existing, new and proposed cell sites, despite its obligation to do so. In response, Indian Country endorsed the Tower Construction Notification System as an elegant solution that facilitated the telecommunications industry working directly with tribal nations to address issues of concern so that it would be unnecessary in nearly all cases for the FCC to engage in consultation. The digital notice system has worked to fairly "streamline" the process for all consulting parties.

The Commission has a federal trust and government to government consultation responsibility to tribal nations, not to the wireless industry. The draft Report and Order does not reflect this trust responsibility and diminishes the Muckleshoot Tribe's ability to protect our cultural and historic properties. The Muckleshoot Tribe strongly disagrees with the Draft Report assertion that tribal reviews have no "corresponding public benefit". All Americans, certainly including native Americans, share a public interest and value the benefit of understanding and preserving the history of this continent where feasible, as expressed in applicable laws.

The draft Report and Order:

- (1) Concludes that small wireless facilities will not, despite the necessarily very site specific and cumulative impact reviews required by the National Historic Preservation Act, ever qualify as "undertakings" or "major federal actions", thereby categorically circumventing the protections of NHPA and NEPA;

- (2) Eliminates tribal administrative fees for initial historic preservation assessments by tribal governments with limited resources, encouraging industry to exclusively rely on its own consultants, whose understanding of Native history and culture is limited, rather than access the unique expertise of tribal nations with regard to impacts on their own cultural or treaty resources and areas; and
- (3) Mischaracterizes the extent of formal consultation carried out prior to the release of the draft Report and Order by including listening sessions, briefings and other meetings that did not constitute true and good faith consultations. We did not see evidence of Commission meetings scheduled with the Muckleshoot Indian Tribe.

Rolling back protections for tribal historic and cultural properties will have grave consequences for the Muckleshoot Tribe and our historic and cultural resources. The Muckleshoot Tribe has invested to build its internal capacity to protect these resources through the creation of the Muckleshoot Preservation Department. The Muckleshoot Preservation Department should be consulted and have its expertise utilized for any and all analysis of areas with potential cultural and historic Muckleshoot resources. Private company consultants may be incentivized to minimize tribal historic or cultural resources – whereas the Muckleshoot Preservation Department is prepared to identify projects of concern, and fully and fairly analyze impacts to any Muckleshoot cultural or historic resources, in consultation with federal government agencies under applicable laws.

The Muckleshoot Tribe believes protection of our cultural and historic resources is paramount because once these properties are damaged or destroyed a tangible part of the Tribe's history and connection to the land is lost forever. The Tribe does not oppose development, so long as the development is responsible and done in accordance with applicable laws such as the NHPA which were clearly intended to assure that federal funds, licenses, and permits properly consider and address historic and cultural values.. The draft Report and Order will undermine current legal protections and lead to irresponsible development and destruction of areas of specific significance to tribal nations. Therefore, the Muckleshoot Tribe urges all Commissioners to vote against adopting this draft Report and Order.

Sincerely,



Virginia Cross  
Chairperson, Muckleshoot Tribal Council